REMARKS

The following remarks. taken together with the claim amendments listed herein, are provided in response to the Office Action communication dated January 16, 2009, wherein the shortened statutory period for response expires on April 16, 2009. Accordingly, this response is considered timely filed.

Upon receipt of the present Office Action, Applicant's claims 15-17, 19-22, 25-27 and 29-32 were pending in the subject application. Claims 15-17, 19-22, 25-27 and 29-32 currently stand rejected under the provisions of 35 U.S.C. §101 as being directed to non-statutory subject matter.

In view of the foregoing, Applicant submits the following remarks wherein the Examiner's rejection is respectfully traversed.

Rejection of Claims under 35 U.S.C. § 101

Claims 15-17, 19-22, 25-27 and 29-32 currently stand rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter.

As provided in Applicant's earlier response, claims 15-17, 19-22, 25-27 and 29-32 were amended in accordance with the Examiner's suggestions to more clearly identify the statutory class of the claimed invention. However, despite the aforementioned amendment to the claims, the Examiner is now asserting that Applicant's claimed invention is nonstatutory because it constitutes pre-solution activity that is directed at a computer-implemented process that does nothing more than gather data. *Office Action, Page 2.*

Contrary to the Examiner's assertion, Applicant respectfully submits that the claimed invention, as previously presented, meets the statutory patentability requirements prescribed under 35 U.S.C. §101 and accomplishes significantly more than the mere step of gathering data. Applicant will concede that the initial limitation in each of the previously presented independent claims recites a data gathering step of "automatically receiving at a processor of the computer system a price of an underlying security from a price source." However, Applicant respectfully submits that the subsequent limitations of the claimed invention are unequivocally directed at more than the mere step of gathering data, which when taken collectively define the claimed

invention of a financial process for replicating the performance of a combination of financial instruments, the process of which is implemented at least partially on a computer system.

Applicant kindly directs the Examiner's attention to the aforementioned subsequent limitations recited in previously presented independent claims 15 and 25, the processes of which comprise multiple steps directed at "setting", "structuring", "providing", "determining" and "issuing". Each of these steps clearly contributes to interpreting and replicating the performance of the underlying security, not merely gathering and presenting data. *See* Parker v. Flook, 437 U.S. 584 (1978). Applicant's claimed invention of replicating the performance of a combination of financial instruments could not be accomplished by simply gathering data.

Accordingly, Applicant respectfully requests that the Examiner's rejection of the foregoing claims under the provisions of 35 U.S.C. § 101 be withdrawn.
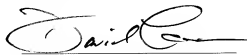

Conclusion

In view of the foregoing remarks, previously presented claim 15, including claims 16-17 and 19-22 which depend therefrom, previously presented claim 25, including claims 26-27 and 29-32 which depend therefrom. and new computer-readable claims 57 and 58, the limitations of which correspond respectively with the limitations of previously presented independent claims 15 and 25, are in condition for allowance. Reconsideration and prompt allowance of this patent application are respectfully requested.

If it will advance the prosecution of this patent application, the Examiner is urged to telephone (973.597.6326) Applicant's undersigned representative. All written communications should continue to be sent to the address provided below.

Respectfully submitted,

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Dated: April 16, 2009

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